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(3) 6/27/01

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,
Plaintiff

v.

COMMONWEALTH OF PENNSYLVANIA,
NINTH JUDICIAL DISTRICT,
CUMBERLAND COUNTY,

and

CUMBERLAND COUNTY,

and

S. GARETH GRAHAM, Individually

and

JOSEPH OSENKARSKI, Individually
Defendants

No.: 1:CV 01-0725

JURY TRIAL DEMANDED

JUDGE YVETTE KANE

FILED
HARRISBURG

JUN 26 2001

MARY E. D'ANDREA, CLERK
Per gls
DEPUTY CLERK

MOTION TO DISMISS

AND NOW COMES the County of Cumberland by its attorneys, Thomas, Thomas & Hafer, LLP, and moves the Court to dismiss the Complaint pursuant to Section 12(b)(6) of the Federal Rules of Civil Procedure based upon the following reasons:

(1) Cumberland County is alleged to be a joint employer with the Court. Therefore, the County is not susceptible to suit under Title VII by virtue of the Eleventh Amendment to the United States Constitution.

(3) If Cumberland County is, as alleged, a joint employer with the Court then it shares the Court's immunity from suit under the provisions of the Pennsylvania Human Relations Act and Count II of the Complaint must be dismissed.

(4) If Cumberland County is a joint employer with the Court, as alleged, then its alleged employees, Osenkarski and Graham, are not susceptible to suit under the PHRA in their individual capacity.

WHEREFORE, Cumberland County prays the Complaint be dismissed for the reasons described above.

Respectfully submitted,

THOMAS, THOMAS & HAFER, LLP

By 

James K. Thomas, II
Atty. ID#: 15613
Paul J. Delasega
Atty. ID#: 23146
305 North Front Street
Sixth Floor, P.O. Box 999
Harrisburg, PA 17108
(717) 255-7602

Attorney for Defendants

DATE: 6-25-01

CERTIFICATE OF SERVICE

I, Paul J. Dellasega, Attorney for Thomas, Thomas & Hafer, LLP, hereby certify that a copy of the foregoing document was served upon the following, by enclosing a true and correct copy in an envelope addressed as follows, postage prepaid:

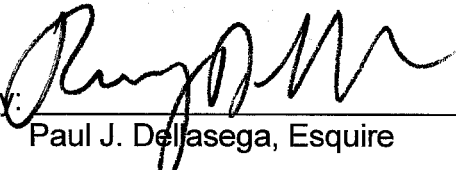
Joseph Osenkarski
Cumberland County Probation Dept.
One Courthouse Square
Carlisle, PA 17013

S. Gareth Graham
Cumberland County Probation Dept.
One Courthouse Square
Carlisle, PA 17013

Howard M. Holmes, Esquire
Administrative Office of Pennsylvania Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102

Debra K. Wallet, Esquire
24 North 32nd Street
Camp Hill, PA 17011

THOMAS, THOMAS & HAFER, LLP

By: 
Paul J. Dellasega, Esquire

DATED:

6 25 01

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Per _____
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CERTIFICATE OF NON-CONCURRENCE

I hereby certify that Debra Wallet, Esquire, counsel for the Plaintiff, has declined to concur with the Motion.

Respectfully submitted,

THOMAS, THOMAS & HAFFER, LLP

By



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